

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

**MICHAEL DEARK GARDNER *also*  
*known as Yakim Ananian El Bey*  
*also known as Ananian El Bey***

**v.**

**DWAIN BREWER, *et al.***

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**PETITIONER**

**Civil No. 1:17cv261-HSO-RHW**

**RESPONDENTS**

**ORDER ADOPTING MAGISTRATE JUDGE'S [7] PROPOSED  
FINDINGS OF FACT AND RECOMMENDATION, GRANTING  
RESPONDENTS' [6] MOTION TO DISMISS, AND DISMISSING  
PETITION FOR WRIT OF HABEAS CORPUS WITH PREJUDICE**

This matter comes before the Court on the Proposed Findings of Fact and Recommendation [7] of United States Magistrate Judge Robert H. Walker, entered in this case on April 30, 2018, and on Respondents' Motion to Dismiss [6] filed on October 31, 2017. The Magistrate Judge recommended that Respondents' Motion to Dismiss [6] be granted and that Petitioner Michael Deark Gardner's Petition for Writ of Habeas Corpus [1] be dismissed with prejudice. After due consideration of the Proposed Findings of Fact and Recommendation [7], the Motion to Dismiss [6], the record, and relevant legal authority, the Court finds that the Magistrate Judge's the Proposed Findings of Fact and Recommendation [7] should be adopted, that Respondents' Motion to Dismiss [6] should be granted, and that Petitioner's Petition for Writ of Habeas Corpus should be dismissed with prejudice.

## I. BACKGROUND

### A. Factual Background

On or about August 28, 2014, Petitioner Michael Deark Gardner (“Petitioner”) was convicted of possession of a controlled substance with intent to distribute in the Circuit Court of Harrison County, Mississippi, First Judicial District. Final J. [6-1] at 1. Pursuant to Mississippi Code § 99-19-81, Petitioner was sentenced to a term of imprisonment of ten (10) years day for day in the custody of the Mississippi Department of Corrections (“MDOC”), said sentence being without hope of parole or probation. *Id.*

Petitioner, through counsel, filed a direct appeal, and on September 17, 2015, the Mississippi Supreme Court affirmed. *See Gardner v. State of Mississippi*, 178 So. 3d 714, 718 (Miss. 2015). Petitioner did not file a petition for writ of certiorari with the United States Supreme Court. On May 2, 2016, through counsel, Petitioner filed an application for post-conviction relief, *see* Application [6-3] at 1, which the Mississippi Supreme Court denied on August 3, 2016, *see* Order [6-4] at 1.

### B. Procedural History

On September 20, 2017, Petitioner filed through counsel a Petition [1] under 28 U.S.C. § 2254 for writ of habeas corpus by a person in state custody. Pet. [1] at 5. On October 31, 2017, Respondents filed a Motion to Dismiss [6] pursuant to 28 U.S.C. § 2244(d), arguing that the Petition is untimely and should be dismissed with prejudice. Mot. [6] at 7. Petitioner did not respond to the Motion [35].

On April 30, 2018, the Magistrate Judge entered his Proposed Findings of

Fact and Recommendation [7] that the Motion to Dismiss [6] be granted and that the Petition be dismissed with prejudice as time-barred. Petitioner has not filed any objections to the Proposed Findings of Fact and Recommendation [7], and the time for doing so has passed.

## II. DISCUSSION

Where no party has objected to a magistrate judge's report and recommendation, the Court need not conduct a de novo review of it. 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made."). In such cases, the Court applies the "clearly erroneous, abuse of discretion and contrary to law" standard of review. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

Having conducted the required review, the Court concludes that the Magistrate Judge's findings are not clearly erroneous, nor are they an abuse of discretion or contrary to law. *See id.* The Petition is time-barred pursuant to 28 U.S.C. § 2244(d), and dismissal with prejudice is warranted.

## III. CONCLUSION

The Court will adopt the Magistrate Judge's Proposed Findings of Fact and Recommendation [7] as the opinion of this Court, will grant Respondents' Motion to Dismiss [6], and will dismiss the Petition for Writ of Habeas Corpus [1] with prejudice as time-barred.

**IT IS, THEREFORE, ORDERED AND ADJUDGED** that, the Proposed Findings of Fact and Recommendation [7] of United States Magistrate Judge Robert H. Walker, entered in this case on April 30, 2018, is **ADOPTED** in its entirety as the finding of this Court.

**IT IS, FURTHER, ORDERED AND ADJUDGED** that, Respondents' Motion to Dismiss [6] is **GRANTED**, and Petitioner Michael Deark Gardner's Petition for Writ of Habeas Corpus [1] is **DISMISSED WITH PREJUDICE**.

**SO ORDERED AND ADJUDGED**, this the 22<sup>nd</sup> day of May, 2018.

*s/ Halil Suleyman Ozerden*

HALIL SULEYMAN OZERDEN  
UNITED STATES DISTRICT JUDGE